83 388

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

E-SYSTEMS, INC.,

and

LIBERTY MUTUAL INSURANCE COMPANY,

Petitioners,

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

and

HOWARD R. CLYMER,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Dallas, Texas 75201
(214) 651-7000

Attorney for Petitioners

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LISTING UNDER SUPREME COURT RULE 28.1

Pursuant to Supreme Court Rule 28.1, the following is a list of all parent companies, subsidiaries (except wholly owned subsidiaries) and affiliates of each corporate Petitioner.

1. E-Systems, Inc. has no parent, subsidiary or affiliate companies.

2. Liberty Mutual Insurance Company has no parent companies or subsidiaries that are not wholly owned. Liberty Mutual Insurance Company has one affiliate company named Liberty Mutual Fire Insurance Company.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-4310

HOWARD R. CLYMER,
Petitioner,

versus

E-SYSTEMS, Employer, and LIBERTY MUTUAL INSURANCE COMPANY, Insurance Carrier, DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR,

Respondents.

Petition for Review of an Order of the Benefits Review Board

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion December 2, 1982, 5 Cir., 1982,___ F. 2d___).

(JUNE 14, 1983)

Before BROWN, GOLDBERG and POLITZ, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it, (Rule 35 Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16) the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

United States Circuit Judge

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-4310

HOWARD R. CLYMER,
Petitioner,

versus

E-SYSTEMS, Employer, and
LIBERTY MUTUAL INSURANCE
COMPANY, Insurance Carrier,
and DIRECTOR, OFFICE OF
WORKERS' COMPENSATION PROGRAMS,
UNITED STATES DEPARTMENT OF LABOR,

Respondents.

Petition for Review of an Order of the Benefits Review Board

(DECEMBER 2, 1982)

Before BROWN, GOLDBERG and POLITZ, Circuit Judges.

POLITZ, Circuit Judge:

Howard R. Clymer seeks review of a decision by the Benefits Review Board (BRB) of the United States Department of Labor under the Longshoremen's and Harbor Workers Compensation Act (LHWCA), 33 U.S.C. §901, as extended by the Defense Base Act, 42 USC. §1651. The BRB, one member dissenting, upheld an

Administrative Law Judge's (ALJ) denial of benefits, opining that the evidence failed to establish a causal connection between Clymer's employment and his physical condition. Finding an erroneous application of the LHWCA, we reverse the denial of benefits and, because of insufficient factual findings on the extent of disability, remand for further proceedings.

Context Facts

In June 1976, Clymer, then 47 years old, was employed by E-Systems, Inc. as a heating and air-conditioning mechanic for work in the Sinai Field Mission, an early warning system located in the Gideon-Mitla passes in the Sinai Peninsula.[1] Clymer then suffered no symptomatic medical problems, and an employment physical apparently disclosed none.

Upon his arrival in Israel, Clymer began working substantially, if not principally, on tasks other than those typically associated with heating and air-conditioning work. His initial assignments involved manual labor and construction work. Clymer's work attitude and efforts met with the approval of his superiors who commended him. He apparently worked hard.

In August 1976 Clymer began to experience difficulties. The first manifestation was a chronic sense of exhaustion. By the following December he suffered nausea and the onset of numbness of the right leg, right arm and right side of his face. He reported to the paramedics who gave him pills. He was subsequently hospitalized and his condition was diagnosed as transient hypertension with possible cerebral ischemia. He returned to work but continued to be troubled by intermittent headaches and bouts of nausea. In May 1977 Clymer returned home for a visit but sought no medical treatment. In June 1977 he went back to the Sinai after signing on for a second year of duty.

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[1] *See Dobyns v. E-Systems, Inc.*, 667 F.2d 1219 (5th Cir. 1982).

In January 1978, Clymer was hospitalized for 12 days. The following month he returned home to seek medical treatment. His employment by E-Systems was terminated in March 1978.

In August 1978 Clymer filed for benefits under the LHWCA. In denying benefits the ALJ concluded that Clymer had failed to provide his employer with timely notice of the claim as required by 33 U.S.C. § 912(a), failed to file his claim within one year as required by 33 U.S.C. § 913(a), and failed to establish a causal link between his employment and the disability asserted.

The evidence before the ALJ included reports from Dr. John Dunn, Clymer's family physician, together with reports or testimony from other doctors to whom Clymer was directed for examination. Dr. Dunn stated that Clymer was disabled due to hypertension and diabetes mellitus. He concluded that work conditions, environment and diet were contributing causes of these difficulties.

Dunn's medical opinion was challenged in part by Dr. Robert L. North, a physician with impressive professional credentials. Dr. North agreed with the diagnosis of hypertension and diabetes, but testified that neither disorder was caused by Clymer's work in the Sinai, climatic conditions there, or diet. Dr. North was of the opinion that Clymer would likely have suffered the same debilitating difficulties even if he had not left Dallas. He believed the condition to be controllable through diet and medication and found Clymer's thus controlled.

The ALJ credited Dr. North's testimony in finding that E-Systems had successfully rebutted the Section 20(a) presumption of causality[2] and in finding that Clymer's condition was not

[2] The statutory presumption of compensability, which appears at section 20(a) of the Act, 33 U.S.C. § 920(a), provides as follows:

aggravated by employment related factors. The BRB affirmed, addressing only the aggravation issue. It concluded that Dr. North's testimony constituted substantial evidence to rebut the statutory presumption. The dissenting member was of the opinion that the employer had not rebutted the statutory presumption of compensability and that Clymer's diet and work environment aggravated a pre-existing condition.

Causality and Aggravation

The scope of our review is limited — we simply determine whether there is substantial evidence on the record as a whole to support the ALJ's conclusion that the employment environment did not aggravate Clymer's condition. That measure of evidence is defined as "'a substantial basis of fact from which the fact in issue can be reasonably inferred ....'" *Diamond Drilling Co. v. Marshall*, 577 F.2d 1003, 1006 (5th Cir. 1978) *(quoting NLRB v. Columbian Enameling and Stamping Co.*, 306 U.S. 292, 299-300 (1939)). *See Fulks v. Avondale Shipyards, Inc.*, 637 F.2d 1008 (5th Cir. 1981), *cert. denied*, 102 S.Ct. 633 (1982); *Todd Shipyards, Inc. v. Fraley*, 592 F.2d 805 (5th Cir. 1979); *Watson v. Gulf Stevedoring Corp.*, 400 F.2d 649 (5th Cir. 1968), *cert. denied*, 394 U.S. 976 (1969).

We are persuaded that the conclusion of the ALJ, upheld by the BRB, on the issue of aggravation is not supported by the quantum of evidence required. Although we have examined the entire record,

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In any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed in the absence of substantial evidence to the contrary —

(a) that the claim comes within the provisions of this Act.

This presumption "applies as much to the nexus between an employees' malady and his employment activities, as it does to any other aspect of a claim." *Swinton v. Kelly*, 554 F.2d 1075, 1082 (D.C. Cir.), *cert. denied.*, 429 U.S. 820 (1976).

we need not look beyond the testimony of Dr. North, upon which the ALJ principally relied, in overturning the BRB's decision. Dr. North testified that Clymer's medical problems, hypertension and diabetes, were "things which may be aggravated by dietary and even environmental influences," although they would not be caused by such. There is no contrary evidence in the record. The medical opinion as to aggravation of a pre-existing condition is thus uncontradicted.

If an employee is able to show that employment conditions aggravated a pre-existing condition resulting in disability, the LHWCA provides benefits commensurate with the disability. *Fulks v. Avandole Shipyards, Inc.; Newport News Shipbuilding & Dry Dock Co. v. Director*, 583 F.2d 1273 (4th Cir. 1978), *cert. denied*, 440 U.S. 915 (1979); *Wheatley v. Adler*, 407 F.2d 307 (D.C. Cir. 1968). We conclude that Clymer is entitled to benefits for a disabling work-related aggravation of a pre-existing condition.

Disability — Extent of Benefits

The ALJ found that Clymer suffered no disability.[3] In reaching this conclusion the ALJ credited the testimony of Dr. North, who examined Clymer in April 1979, 14 months after he had returned from the Sinai and undergone a course of treatment by Dr. Dunn. Dr. North could find no physical impairment which would preclude Clymer's return to his prior employment. The ALJ credited Dr. North's testimony that hypertensive and diabetic conditions were being controlled by diet and medication, and the medical opinion of two other doctors who stated that Clymer's neurological examination was within normal limits and that there was no evidence of organic disease.

[3] Disability "means incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." 33 U.S.C. §902(10).

We find no medical evidence offered by E-Systems addressing the question of whether Clymer's condition prevented him from earning comparable wages prior to the time his condition improved due to diet and medication. The only evidence on this point is found in the reports of Dr. Dunn. On April 13, 1978, Dr. Dunn reported that Clymer was unable to work, a condition which would continue indefinitely. In a subsequent report, Dr. Dunn stated that if a neurological examination proved negative, Clymer would be considered employable. That examination, as noted above, was negative; however, Dr. Dunn advised Clymer against returning to work. In a letter dated August 28, 1979, Dr. Dunn stated that Clymer's condition remained the same, with the exception that his blood sugar level was normal. "The same" was nor further defined and no explanation was offered for his advice to Clymer that he defer returning to work.

The ALJ's findings do not provide a sufficient basis for an evaluation of the extent of Clymer's disability claim. There are no findings relative to Clymer's symptoms, including fainting, periods of semi-consciousness and numbness, and how these would bear upon a finding of total temporary, permanent partial, or temporary partial disability. The evidence of record points to the existence of a period of disability, however, we are unable to fathom how much or how long. We must remand for further findings on the issue of disability.

Statute of Limitations

Under Section 913(a) of the Act, a claim under the LHWCA is time-barred unless it is filed within one year after an employee is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury and the employment. The ALJ found that Clymer was aware that he had intermittent labile hypertension on December 7, 1976 and therefore his claim,

filed August 21, 1978, was not timely. The ALJ made no finding, however, that Clymer was told in December 1976 that his condition was employment related.

The ALJ's finding is not supported by substantial evidence. Although aware from late 1976 that he had some sort of affliction, it appears that the first time Clymer had reason to suspect his condition was employment related was in April 1978, after he received Dr. Dunn's diagnosis. *See Fulks v. Avondale Shipyards, Inc.*, 637 F.2d [illegible] 1012 ("the period 'begins to run when the employee know[illegible] reasonably should know, that his condition . . . arose out of his employment' "). Clymer's claim was therefore timely filed.

Under section 912(a), Clymer was required to give notice to E-Systems within 30 days. This requirement was also satisfied — an E-Systems employee testified that the company received notice of Clymer's claim in April 1978. We therefore conclude that the ALJ's finding that Clymer failed to comply with the LHWCA's time and notice requirements, which finding the BRB did not address, is not supported by substantial evidence.

REVERSED and REMANDED for further proceedings consistent herewith.

APPENDIX C

C-1

BENEFITS REVIEW BOARD

U.S. DEPARTMENT OF LABOR

No. 79-766

HOWARD CLYMER	)
Claimant-Petitioner,	)
v.	)
E-SYSTEMS	)
and	)
LIBERTY MUTUAL INSURANCE COMPANY	)
Employer/Carrier-	)
Respondents	) DECISION and ORDER

Appeal from the Decision and Order of David W. DiNardi, Administrative Law Judge, United States Department of Labor.

Samuel L. Boyd (Kelsoe & Ayres), Dallas, Texas for the claimant.

John W. Payne and David Townend (DeHay & Blanchard), Dallas, Texas, for the employer.

Before: SMITH, Chief Administrative Appeals Judge, MILLER* and KALARIS, Administrative Appeals Judges.

SMITH, Chief Administrative Appeals Judge:

This is an appeal by claimant from the Decision and Order (79-LHCA-1644N) of Administrative Law Judge David W. DiNardi pursuant to the provisions of the Longshoremen's and Harbor Worker's Compensation Act, as amended, 33 U.S.C. §901 *et seq.*,

*Dissent by MILLER, Administrative Appeals Judge, to follow.

as extended to the Defense Base Act, 42 U.S.C. §1651 *et seq.* (hereinafter, the Act). This case involves the issue of whether claimant's hypertension and diabetes were either caused or aggravated by working conditions and his diet while working in Israel for employer.

In June 1976, claimant, a mechanic, was hired by E-Systems (hereinafter, employer) and sent to employer's Sinai Mission Field in Israel. On December 7, 1976, after experiencing numbness and nausea, claimant was hospitalized. A diagnosis of transient hypertension with possible cerebral ischemia was made; however, causation was not established. Cl. Ex. 4, Res. Ex. 7. Following his hospitalization, claimant returned to work and continued to experience intermittent attacks of headaches and nausea. Claimant again was hospitalized in January 1978, and he subsequently returned to the United States for further medical evaluation. Upon his return, in February 1978, claimant was examined by his family physician, Dr. John Dunn. In a report dated April 13, 1978, Dr. Dunn concluded that claimant was unable to return to work due to hypertension and possible diabetes mellitus. Cl. Ex. 10. In a report dated August 28, 1978, Dr. Dunn attributed claimant's condition in part to the work conditions and diet in Israel.

Claimant filed under the Act in August 1978, and employer controverted. Subsequent to a hearing, the administrative law judge denied benefits. He found that claimant failed to provide employer with timely notice of injury as required by Section 12(a) of the Act, 33 U.S.C. §912(a). He further found the claim barred by Section 13, 33 U.S.C. §913. Assuming *arguendo* that the claim was timely, the administrative law judge found no causal connection between claimant's condition and his employment. Section 2(2), 33 U.S.C. §902(2). Claimant appeals the decision of the administrative law judge, urging reversal of these findings.

On the issue of causal connection, the record contains conflicting medical opinion. Dr. John Dunn, claimant's treating physician, opined, in a report dated August 28, 1978, that claimant's work conditions and diet were both contributing causes to his hypertension and diabetes. Dr. John North, however, testified that neither of these conditions may be attributed to claimant's occupation, geographic location, work environment or diet. In Dr. North's opinion, claimant would have developed the same impairments had he remained in Texas. He denied that the manual labor required of claimant in his job aggravated these conditions. Moreover, Dr. North considered claimant's age, overweight, and heavy alcohol use as factors aggravating his conditions.

In a detailed and well reasoned opinion, the administrative law judge found that employer had rebutted the Section 20(a) presumption of causal connection. The administrative law judge credited the testimony of Dr. North and found that claimant's hypertension and diabetes mellitus would have occurred irrespective of his employment. Moreover, the administrative law judge found that these conditions were not aggravated by claimant's employment, work environment or diet. He credited testimony that employer provided cafeteria-style meals, designed to approximate the American-type diet, that special food items could be prepared for workers at their request, and that it was possible for individuals to do their own cooking.

The factfinder is not bound to accept the opinion or theory of any particular medical examiner. *Todd Shipyards v. Donovan*, 300 F.2d 741 (5th Cir. 1962). The testimony of Dr. North not only constitutes substantial evidence to rebut the presumption, but also constitutes substantial evidence to support the administrative law judge's finding that claimant's condition is not causally related to his employment. *Del Vecchio v. Bowers*, 296 U.S. 280 (1935).

Accordingly, we affirm the administrative law judge's denial of benefits on the basis of the lack of causal connection. We do not reach the other issues appealed.

SO ORDERED.

SAMUEL J. SMITH
Chief Administrative Appeals Judge

I Concur:

ISMENE M. KALARIS
Administrative Appeals Judge

Dated this 11th day
of June 1981

U.S. Department of Labor

Benefits Review Board
1111 20th St., N.W.
Washington, D.C. 20036

A decision by the Benefits Review Board becomes final after 60 days from the date such decision is issued unless a petition requesting review has been filed in the appropriate United States Court of Appeals. 33 U.S.C. §921(c)

BENEFITS REVIEW BOARD

U.S. DEPARTMENT OF LABOR

No. 79-766

HOWARD CLYMER	)	
Claimant-Petitioner	)	
v.	)	
E-SYSTEMS	)	
and	)	
LIBERTY MUTUAL INSURANCE COMPANY	)	
Employer/Carrier-	)	
Respondents	)	DISSENTING OPINION

MILLER, Administrative Appeals Judge, dissenting:

I dissent from the majority's denial of benefits to claimant. The record does not support my colleagues' statement that "[t]he testimony of Dr. North not only constitutes substantial evidence to rebut the presumption, but also constitutes substantial evidence to support the administrative law judge's finding that claimant's condition is not causally related to his employment." Majority Opinion, slip op. at 4. For the reasons stated herein, I would hold that employer has not rebutted the presumption of compensability mandated by Section 20(a), 33 U.S.C. §920(a).

Section 20(a) provides that "[i]n any proceeding for the enforcement of a claim for compensation under this Act it shall be presumed, in the absence of substantial evidence to the contrary — (a) That the claim comes within the provisions of this Act." 33 U.S.C. §920(a). This presumption finds its basis in the humanitarian nature of the Act. *Leyden v. Capital Reclamation Corp.*, 2 BRBS 24, 27, BRB Nos. 74-226/A (1975), *aff'd mem.* 547 F.2d 706 (D.C.

Cir. 1977). *See Hensley v. Washington Metropolitan Area Transit Authority*, 13 BRBS 182, ___ F.2d ___ , No. 79-2552 (D.C. Cir. March 17, 1981), *rev'g* 11 BRBS 468, BRB No. 78-637 (1979) (Miller, dissenting). Moreover,

> the beneficient purposes and humanitarian nature of the Act must be borne in mind when deciding whether the employer has presented 'substantial' evidence; thus doubtful questions, including factual ones like work-relatedness, must be resolved in favor of claimants.

Hensley, 13 BRBS at 185, ___ F.2d at ___ . The Section 20(a) presumption "applies as much to the nexus between an employee's malady and his employment activities as it does to any other aspect of a claim." *Swinton v. J. Frank Kelly, Inc.*, 4 BRSB 466, 475, 554 F.2d 1075, 1082 (D.C. Cir.) *cert. denited*, 429 U.S. 820 (1976). In order to rebut the Section 20(a) presumption, the employer must present "evidence specific and comprehensive enough to sever the potential connection between the disability and the work environment." *Parcons Corp. of California v. Director, OWCP*, 12 BRBS 234, 235-36, 619 F.2d 38, 41 (9th Cir. 1980). Further since this case arises under the Defense Base Act, the employer must show that the condition did not arise out of the "zone of special danger" created by claimant's conditions of employment. *See O'Leary v. Brown-Pacific-Maxon, Inc.*, 340 U.S. 504 (1951). A showing that claimant's malady may also be caused by some factors which are not work-related is insufficient to rebut the presumption.

Dr. John Dunn diagnosed claimant's illness as diabetes mellitus and transient hypertension, a diagnosis assented to by Dr. Robert North. Dr. Dunn opined that the camp diet and work conditions were both causes, albeit not the only ones, in the development of claimant's symptoms. Cl. Ex. 5. The majority, relying on the testimony of Dr. North, avers that there is no causal connection between claimant's employment and his illness.

With this assertion, my colleagues ignore the well-established principle that "a aggravation of a pre-existing condition may constitute a compensable . . . injury under the Act. . . ." *Wheatley v. Adler*, 407 F.2d 307, 312 (D.C. Cir. 1968). Although Dr. North's testimony may be cited to for the statement that claimant's employment did not cause his malady, his testimony supports claimant's assertion that his employment *aggravated* these conditions.

During cross-examination by claimant's counsel, the following testimony was offered by Dr. North.

Q Dr. North, do I understand your opinion to be then that Dr. Dunn has no medical basis for his opinion, is that correct?

A Specifically there is no basis in medical probability that such conditions as heat, perspiration, the specific diet would be causes for labile hypertension or diabetes.

Q And it's your testimony that can't affect it, too, isn't that your testimony?

A That if what?

Q That it can't affect those disorders either?

A It certainly can affect those disorders.

Hearing Transcript at 89. Dr. North later reiterated the same opinion.

Q OK.

Earlier when you was talking about diet, you took me back a little bit, but I want to make sure I understand you. You're not saying that diet can't affect bodily dysfunctions, but that you didn't see it causing bodily dysfunctions as the hypertension and as to diabetes?

A That's correct.

Hearing Transcript at 102-03.

In response to a request for an explanation of why Dr. North disagreed with Dr. Dunn, Dr. North replied as follows.

> **A** Because that doesn't fit with our current understanding in the weight of the medical evidence as to the genesis and the nature of these diseases. There are things which may be aggravated by dietary and even environmental influences but they are obviously not caused by these things because there are many many people who are exposed to the same conditions that never develop the disorder.
>
> So there has to be some other factor or factors involved in the genesis of hypertension and diabetes. In essence that's my answer.

Hearing Transcript at 129-30. Thus, the majority's reliance on Dr. North's testimony to support its contention of no causal connection is misplaced. It is clear that the employer presented no evidence specific and comprehensive enough to sever the potential link between claimant's malady and his employment. Rather, employer's medical evidence supports claimant's contention that his illnesses were work-related.

In addition, the majority's statement that "Dr. North considered claimant's ... heavy alcohol use as [a factor] aggravating his conditions" is incorrect. Majority Opinion, slip op. at 3. Although Dr. North opined that heavy alcohol use is an aggravating factor in development of hypertension and diabetes, he testified that he had no knowledge of *claimant's* alcohol use. Hearing Transcript at 132-33.

However, assuming *arguendo* that claimant did use alcohol heavily, I would still hold that the link between his illness and employment was not severed. If the conditions of employment

create a zone of special danger out of which the injury arose, then a causal connection exists. *O'Leary v. Brown-Pacific-Maxon, Inc.* I would take judicial notice that the Sinai is a desert and conducive to drinking. Accordingly, since the employer has not established otherwise, *see* 33 U.S.C. §920(a), any heavy alcohol use is attributable to claimant's work environment.

Consequently, my colleagues err in their conclusion that Dr. North's testimony constitutes substantial evidence to rebut the Section 20(a) presumption. In view of the uncontradicted testimony that diet and the work environment may aggravate conditions, I would reverse the administrative law judge's denial of benefits. *See Kicklighter v. Ceres Terminal, Inc.*, 13 BRBS 109, 118 n. 10, BRB No. 79-550 (1981).

JULIUS MILLER
Administrative Appeals Judge

Dated this 30th day
of September 1981

APPENDIX D

U.S. Department of Labor

Office of Administrative Law Judges
Hebert Federal Building
Room 909, 600 South Street
New Orleans, Louisiana 70130
Reply to the Attention of: OALJ

In the Matter of	)	
	)	
HOWARD R. CLYMER	)	
Claimant	)	Case No.
against	)	79-LHCA-1644N
E-SYSTEMS	)	
Employer	)	OWCP No.
LIBERTY MUTUAL INSURANCE COMPANY	)	2-58065
Carrier	)	
	)	

SAMUEL L. BOYD, ESQ.
Kelsoe and Ayres
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Dallas, Texas 75240

JOHN WILLIAM PAYNE, ESQ.
DAVID TOWNEND, ESQ.
Gardere, Wynne, Jaffe and DeHay
1700 Republic National Building
Dallas, Texas 75201

Before: DAVID W. DI NARDI
Administrative Law Judge

DECISION AND ORDER

Statement of the Case

This is a claim for workmen's compensation benefits under the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. §901, *et seq.*) as extended by the Defense Base Act (42 U.S.C. §1701, *et seq.*), hereinafter jointly referred to as the "Act." The hearing was held on September 6, 1979 in Dallas, Texas, at which time all parties were given the opportunity to present evidence, oral arguments and post-hearing briefs, which have been admitted into evidence as Claimant's Exhibit 24 and Respondents' Exhibit 13. Application for an attorney's fee, filed by Claimant's counsel, has been admitted into evidence as Claimant's Exhibit 23. This decision is being rendered giving full consideration to the entire record.

Stipulations

The parties have stipulated, and I find, as follows:

1. The Act applies;

2. The Employer/Employee relationship existed between E-Systems (the Employer) and Howard R. Clymer (the Employee) from June 16, 1976 to March 11, 1978;

3. The Notice of Controversion was filed on November 14, 1978; and

4. Claimant's annual earnings were $24,480.00.

The principal unresolved issues in controversy are:

1. Whether a compensable injury has occurred and, if so, the date thereof;

2. Whether timely notice of the injury was given to the Employer;

3. Whether Claimant has timely filed this claim;

4. The nature and extent of any disability;

5. Attorney's fee, penalties and interest; and

6. Claimant's average weekly wage.

Howard R. Clymer, fifty years of age at the time of the hearing, did not complete high school. He has spent most of his work career as a sheet metal worker. From 1957 to 1970 he operated his own sheet metal business and in 1970 he began to work for several Dallas companies as a heating and air conditioning repair man. In 1971 he again opened his own air conditioning and heating repair firm until June of 1976 when he went to work for the Employer in the Sinai. Claimant was hired to work as a heating and air conditioning mechanic although he was told from time to time he might be required to do work outside of his trade. Upon arrival at the Sinai Field Mission, Claimant spent some time unloading and setting up furniture, doing some construction and carpentry work building a 40,000 gallon water tank, all of which work he characterized "as all physical." He also helped build office structures and covered plumbing ditches, work performed from 7:30 a.m. to 5:00 p.m. in a climate described as a different type of hot weather than anything he had experienced, remarking that it was uncomfortable working in the heat. In the first five-and-one-half-months Claimant repaired only one air conditioning unit.

Claimant passed his pre-employment physical examination and testified that his health was "good" before going to the Sinai. In August of 1976 Claimant felt exhausted at the end of the day and began having headaches. On December 7, 1976 Claimant felt numbness in his right leg, in part of his right arm and the right side

of his face had a numbness. He also experienced a nauseated stomach, reporting these difficulties to the paramedics at the dispensary. He was given some pills and told to rest. The following spring or summer Claimant experienced similar difficulties and he was hospitalized in Tel Aviv for one week. Upon his discharge Claimant returned to his same employment with no restrictions (Tr. 24-58).

Claimant experienced similar physical problems in late spring or early summer of 1977 while at a Tel Aviv hotel, experiencing periodic headaches also. Thereafter, in January of 1978, while shopping in a Tel Aviv department store, his headaches started to bother him and he felt quite sick. After returning to his hotel, he called his Employer who thereupon provided a doctor who gave him some pills, telling him to rest and to return to work. However, Mr. Carl Lunquist, Employer's SFM Tel Aviv Office Manager, told Claimant to pack his suitcases for admittance to a local hospital, where Claimant remained for twelve days. Thereupon, Claimant returned to work and, on February 23 or 24, 1978, was advised he would be sent home for "further medical evaluation before my condition worsened." Claimant refused to sign a release from the Employer, returned to the United States on February 26, 1978 and sought medical treatment from Dr. Dunn the next day (Tr. 150-163).

Claimant testified he was a moderate drinker, taking "maybe two or three drinks in one day" and remarking that he was intoxicated "in a period of twenty and a half months that I was there, three or four times maybe at the most." Claimant is on a "no alcohol diet, a diabetic diet." Claimant's problems with the Internal Revenue Service have been corrected. Claimant has not worked since his return to the U.S. because Dr. Dunn has advised him not to work "until this was all under control, my illnesses and so forth, whatever it is" (163-167).

Upon cross-examination, Claimant admitted that his claim was filed on August 16, 1978, that his weight in the Sinai had increased to as high as 230 or 240 and that he now weighs 182, that his employment contract required him to perform services other than those for which he was hired, that he worked six days a week for three weeks and then had "seven days R&R" at Tel Aviv, Jerusalem, Bethlehem, Jaffa, Suez City and Cairo, Egypt. Claimant returned home for a visit in June of 1977 and then resumed his normal duties at SFM until his medical problems around January 28, 1978 in Tel Aviv, admitting that he new something was wrong with him at that time and that he went to see Dr. Dunn on February 27, 1978, the day after his return. He stated that no one had told him that his two previous attacks were job-related (Tr. 182-202).

Claimant was concerned about the I.R.S. audit in 1977. He admitted that he sometimes drank an orange Vodka, Canadian Club or scotch in his room and at other times in the SFM lounge before playing bingo. He also admitted there was a salad bar in the dining room, that fresh fruit also was available and no one forced him to eat any particular food item. Dr. Dunn has been his family doctor since 1970. The paramedics who worked in the dispensary operated by the Employer told Claimant to return to work after his January 1978 incident (Tr. 207-229). Mr. Clymer characterized Dr. Dunn as his Department of Labor-approved doctor (Tr. 237-238). Although Claimant experienced another attack in May of 1977, shortly before returning to Garland, Texas for a vacation, he did not seek medical attention at that time (Tr. 240). Claimant's first attack occurred in December of 1976 while he was in the base camp; the second attack occurred in March or May of 1977 while at a Tel Aviv hotel and the third attack occurred at a Tel Aviv department store on January 28, 1978 (Tr. 243).

Claimant, having been called as a rebuttal witness, testified that he drank beer occasionally, but not the amount attributed to him,

and that Dr. Dunn, shortly after Claimant's return to the United States, told him his diabetes might be job related (Respondents' Exhibit 6, dated April 13, 1978; Tr. 283-286).

The Employee's Claim for Compensation (Form LS-203), dated August 16, 1978, was received by the Office of Workers' Compensation Programs-Houston on August 21, 1978 (Respondents' Exhibit 10). A letter from Claimant's attorney, Samuel L. Boyd, Esq., dated November 2, 1978, was received on November 29, 1978 (Respondents' Exhibit 9).

Robert L. North, M.D., a specialist in cardiovascular diseases and internal medicine, obtained his medical degree in 1955. Dr. North, after reviewing Claimant's medical file and taking a history report, examined Claimant on April 26, 1979. At this time Claimant complained of weakness and numbness in his extremities and episodes of painful sensations also in his extremities and at times in his chest. Dr. North stated this physical examination was normal with the exception of the presence of edema or swelling of the lower extremities. Dr. North requested a neurological evaluation in view of the complaints. Dr. Stuart Black performed a thorough neurological examination, the results of which were negative. Dr. North had Claimant's tolerance for glucose or sugar tested. These tests substantiated what previous tests had documented, namely that Claimant had mild diabetes mellitus, was placed on a diet and given oral medication. Dr. North recommended psychological testing and referral to a psychiatrist, but Claimant refused.

On the basis of this and a later examination, Dr. North concluded that he "could find no satisfactory explanation or medical diagnosis to account for Mr. Clymer's symptomatology" and that his mild diabetes and intermittent high blood pressure were under control. Dr. North expressed the opinion that these conditions (i.e. mild diabetes and intermittent high blood pressure) could not be

"attributed to his occupation or to diet or to geographical location, environment, nor this sort of cause." (Tr. 58-69).

Furthermore, Dr. North did "not find any physical impairment, impairment and exercise ability coordination, anything of this sort that would preclude his employment in that field" (Tr. 70). Claimant's exercise stress test was negative, in that there was no indication of an abnormal cardiovascular response to physical exertion (Tr. 82-82). Dr. North testified that Claimant's diabetes mellitus tends to be an inherited disease and involves an insulin deficiency (Tr. 84).

Upon cross-examination, Dr. North stated that although physical stress and diet might affect diabetes, "there is no basis in medical probability that such conditions as heat, perspiration, the specific diet would be causes for labile hypertension or diabetes." Furthermore, "obesity is a factor in the development of the manifestations of diabetes and hypertension as well" (Tr. 87-89). Dr. North admitted that an improper diet of high carbohydrates, fats and high salts may affect or aggravate his hypertension and diabetes (Tr. 100-101) but denied that physical exertion in the desert sun might affect or aggravate these conditions (Tr. 102). Anxiety or use of alcohol might aggravate hypertension (Tr. 104) but "blood pressure per se is not a disease and it doesn't cause disability. It is through its affect (sic) on other organ systems that blood pressure becomes a problem and it is to prevent these affects (sic) that we treat people with high blood pressure" (Tr. 107) because "one of the consequences of sustained high blood pressure is heart failure" as well as "hardening of the arteries," stroke and kidney disease. Furthermore, "blood pressure itself does not cause symptoms or, you know, make people dizzy or anything or that sort." Hypertension and diabetes "become clinically apparent in middle-age years" (Tr. 110-112). Although Dr. North admitted "that diet and certain kinds of stress may aggravate these problems" he did not know what caused the symptoms of which Claimant was complaining (Tr. 121).

Dr. North opined that Claimant's physical examination and testing disclosed no objective evidence of brain disease, heart disease or kidney damage (Tr. 126). Excessive use of alcohol is "a risk factor, if you will, for both hypertension and diabetes or glucose intolerance." However, hypertension and diabetes are not caused by labor in the heat . . . because there are many people who are exposed to the same conditions that never develop the disorder." Claimant's overweight condition and age "are both aggravating factors." (Tr. 129-130).

Claimant's swelling of his legs "represents chronic venous insufficiency due to some unknown cause" (Tr. 134). "There is no sound scientific basis, though, to say that geography or occupation caused this" (Claimant's condition) (Tr. 136). Furthermore, Dr. North opined "that the location, the climate and whatever are purely accidental in this case and that had he remained in South Texas and that had he been given the same diet, the same body weight, the same, you know, problems with the I.R.S., however much he drank drinking the same, he would have developed the same problems at the same time. In that respect, it's his destiny" (Tr. 141). "True diabetes mellitus is something that does show a very strong family incident" and "there is no specific diet that causes hypertension or causes diabetes" and "that the geographic location and occupation in my opinion have nothing to do with the appearances of high blood pressure or diabetes mellitus in this case . . ." Furthermore, adequate physical activity and exercise are methods used to control hypertension and diabetes meilitus (Tr. 143-147).

Mr. Michael E. Kapple, Employer's Program Manager, testified that he was in charge of building an early warning system in the Sinai Desert, a system which was an out-growth of Henry Kissinger's shuttle diplomacy and was manned entirely by U.S. volunteers. Heavy construction started in February of 1976 and ran through mid-June of 1976, at which time the camp was 99 percent

completed. Cafeteria-style meals were provided the workers, meals which were designed to approximate an American type diet as closely as possible. Each person was free to select any of the items available at any meal. The Sinai weather was comparable to Texas weather with the exception of a milder winter. The location was 2300 feet on top of a mountain and there was a continuous breeze so that even the hottest days ("110 degrees Fahrenheit") were bearable. Upon his discharge from the hospital in January of 1978, Claimant worked half days for several days and thereafter it was determined to send Claimant home to be examined by his own family doctor. Thus, Employer intended that Claimant be terminated for medical reasons because he had missed a few work days and was physically unable to continue in his normal work capacity. However, Claimant would not agree to his procedure whereby he would receive 100 per cent of his contract benefits and, instead, returned to the United States on his own. In December of 1977 or January of 1978 Mr. Kapple learned that Claimant was being audited by the I.R.S., remarking that "he appeared to be quite anxious about it." Claimant never reported to him any job-related injury or occupational disease (Tr. 245-255).

Upon cross-examination, Mr. Kapple admitted that he knew Claimant had been in the hospital and that the I.R.S. audit "could have been later or earlier in time" possibly by six months. He testified that there was not "much manual labor for long term durations after approximately the middle of June 1976," remarking that there were various construction add-ons thereafter, that 70 percent or higher of Claimant's work was in the air conditioning-heating field, that special food items were prepared for certain workers at their request and that it was also possible for individuals to do their own cooking. Dr. Zaigraeff advised Mr. Kapple by medical report the nature of Claimant's medical problems in January of 1978. At that time, the two paramedics, Mr. Barnhill and Mr. Lay, reported that they also were concerned about Claimant's health (Claimant's Exhibit 7 and Tr. 256-267).

Mr. Walter S. Shavers, an employee of the Employer herein, testified that he first learned Claimant was claiming a job-related occupational disease or illness on April 13 or 14, 1978 in a phone conversation with Mr. H. H. McKelvey, Employer's insurance administrator. Mr. Shavers was not in Israel in January or February 1978 and had no idea what sort of notice had been given to the Employer in January or February 1978 (Tr. 270-273).

Mr. Gary Ford, Employer's personnel specialist, arrived in the Sinai in May of 1976 and departed in January of this year. On two or three occasions each month Mr. Ford tended bar in the PX lounge, testifying that on seven, eight or nine occasions he observed Claimant drinking six to eight beers at the bar in the course of an evening, that Claimant told him about an I.R.S. audit and that he seemed nervous about this sometime in the summer or fall of 1977, as well as a personal health problem (Tr. 274-278). Upon cross-examination, Mr. Ford admitted that he did not know how much money was involved in the I.R.S. audit, remarking that Claimant "was upset about it and he wanted some sort of solution" and that a lot of people drink when they are isolated (Tr. 278-282).

Dr. John Dunn reported on August 28, 1979 that Dr. Stuart Black's neurological evaluation was within normal limits, that Claimant's blood sugar level is now normal because of his diet, that he experiences intermittent episodes of hypertension and that Claimant's camp diet of high carbohydrates, high salt intake and work conditions "were definite factors in his medical situation" (Claimant's Exhibit 5). Dr. Dunn reported on April 13, 1978 that Claimant first saw him for this condition on February 27, 1978 and that he diagnosed hypertension and possible diabetes (Claimant's Exhibit 10). On July 18, 1978 Dr. Dunn reported that Claimant's hypertension and diabetes mellitus were under control by diet and oral medication and that he "could be considered fully employable" if neurological evaluation proved negative (Respondents' Exhibit 6). Dr. Dunn reported on August 7, 1978 that

Claimant's several episodes of numbness of the right side of his head probably "was transient ischemic attacks. These attacks had never occurred prior to his residing in Israel." Furthermore, Dr. Dunn opined that Employer's medical personnel mis-diagnosed acute coronary insufficiency, precardial pains and cirrhosis of the liver (Respondents' Exhibit 6).

On February 9, 1978 Dr. V. Zaigraeff reported that Claimant had been hospitalized on January 31, 1978 at Assuta Hospital, Tel Aviv, with a final diagnosis of (1) Essential hypertension, (2) Strain of the Myocardium and (3) Slight cirrhosis of the liver. It was reported that Claimant was overweight at 210 pounds (Claimant's Exhibit 6). On February 23, 1978 the camp paramedics reported that "Mr. H. R. Clymer should be sent home as soon as possible due to his medical condition" (Claimant's Exhibit 7). Dr. Chaim Feldman, on February 31, 1978, reported that Claimant should "stop drinking alcohol to *reduce* weight" (Claimant's Exhibit 9).

The Employer's first report of accident or occupational illness (BEC-202) reflects that Claimant did not return to work as of February 25, 1978, that his pay was stopped as of March 11, 1978, that the Carrier was notified on May 8, 1978 of this occupational illness and that Dr. Dunn diagnosed hypertension and possible diabetes on April 13, 1978 (Claimant's Exhibit 12).

On June 18, 1979 Dr. Robert L. North, Chief, Internal Medicine, Presbyterian Hospital of Dallas, reported that his examination of the Claimant on April 26, 1979 led to the conclusion that Claimant's mild diabetes and labile hypertension cannot be attributed to his occupation or residence in Israel (Respondents' Exhibit 1). On May 23, 1979 Dr. Stuart B. Black reported that Claimant's EEG was normal (Respondents' Exhibit 3). On March 2, 1978 Dr. Jack Spitzberg, a cardiologist and internist, opined that he could not determine an etiology for his problems in Israel. that "perhaps extreme anxiety at that time could have raised his blood pressure

transiently'' and that ''at this point in time I feel he is generally in reasonable health for his age and aside from possibly some anxiety attacks, I can find no evidence of organic disease.'' (Respondents' Exhibit 8). On March 16, 1978 Dr. Jack Spitzberg reported that Claimant's stress test, blood pressure, EKG and blood pressure were normal (Respondents' Exhibit 5-2). On March 17, 1978 Dr. R. J. Barner, a radiologist, reported that Claimant's adrenal sonogram demonstrated ''no adrenal masses or other abnormalities'' (Respondents' Exhibit 5-19). On March 17, 1978 Dr. T. J. Davis, a radiologist, reported ''PA and lateral views of the chest reveal the heart, pulmonary vascularity and both lung fields to be normal.'' (Respondents' Exhibit 5-20).

In a history report, dated March 17, 1978, Claimant advised medical personnel at Presbyterian Hospital of Dallas that ''he was a heavy drinker but says he stopped two months ago.'' (Respondents' Exhibit 5-7).

Findings of Fact and Conclusions of Law

In arriving at a decision in this matter, it is well-settled that the fact-finder is entitled to determine the credibility of the witnesses, to weigh the evidence and draw his own inferences from it, and he is not bound to accept the opinion or theory of any particular medical examiner. *Sargent* v. *Matson Terminals, Inc.*, 8 BRBS 564, BRB No. 77-597, 77-597A (June 30, 1978); *Brandt* v. *Avondale Shipyards, Inc.*, 8 BRBS 698, BRB No. 77-103 (August 22, 1978); *Bank* v. *Chicago Grain Trimmers Association, Inc.*, 390 U.S. 454, 467 (1698), *reh. denied*, 391 U.S. 929 (1968); *Todd Shipyards* v. *Donovan*, 300 F.2d 741 (5th Cir. 1962). At the outset it further must be recognized that all factual doubts must be resolved in favor of the Claimant. *Wheatley* v. *Adler*, 407 F.2d 307 (D.C. Cir. 1968); *Strachan Shipping Company* v. *Shea*, 406 F.2d 521 (5th Cir. 1969), *cert. denied*, 395 U.S. 921. Furthermore, it has consistently been held that the Act must be construed liberally in

favor of the Claimant. *Voris* v. *Eikel*, 345 U.S. 328, 333, 74 S.Ct. 88, 98 L.Ed. 5 (1953); *J. B. Vozzolo, Inc.* v. *Britton*, 377 F.2d 144 (D.C. Cir. 1967). The Act provides a presumption that a claim comes within the provisions of the Act (33 U.S.C. §920(a)). This Section 20 presumption "applies as much to the nexus between an employee's malady and his employment activities as it does to any other aspect of a claim." *Swinton* v. *J. Frank Kelly, Inc.*, 544 F.2d 1075 (D.C. Cir. 1976), *cert. denied*, 429 U.S. 820 (1976). To rebut this presumption, the employer must introduce substantial evidence to the contrary. *Butler* v. *District Parking Management Co.*, 363 F.2dk 682 (D.C. Cir. 1966). Furthermore, one must introduce facts, not speculation, to overcome the presumption of compensability. Reliance on a mere hypothetical probability in rejecting a claim is contrary to the presumption. *Steele* v. *Adler*, 269 F.Supp. 276 (D.D.C. 1967).[1]

It is, of course, well settled that a Claimant's credible subjective complaints, standing alone, are sufficient to establish entitlement to compensation. *Ruiz* v. *Universal Maritime Service Corp.*, 8 BRBS 451, 454, BRB No. 78-135 (May 30, 1978, citing *Perini Corp.* v. *Heyde*, 306 F. Supp. 1321 (D.R.I. 1969); *Rudolph McIntosh* v. *Parkhill Goodloe Co.*, 4 BRBS 3, BRB No. 75-623 (May 17, 1976), *aff'd mem.*, 551 F.2d 1283 (5th Cir. 1977); *Barbara A. Woodham* v. *U.S. Navy Exchange*, 2 BRBS 185, BRB No. 75-105 (August 20, 1975); *Larson's Workmen's Compensation Law*, Volume 3, §79.53. "However, there must be some basis in the record to support the extent of the disability awarded." *Woodham, supra*, at 191. Furthermore, the Administrative Law Judge is permitted to rely on his own observations. *Perini Corp.* v. *Heyde, supra.*

[1] Based upon the humanitarian nature of the Act, the Act is to be interpreted liberally in favor of Claimants and Claimants are to be accorded the benefit of doubts." *David P. Harrison* v. *Potomac Electric Power Company*, 8 BRBS 313, 314, BRB No. 78-139 (May 30, 1978).

Although Section 20 contains several presumptions, including the presumption of causality, there is no presumption that the Claimant suffered an injury. *Percy L. Murphy*, v. *SCA/Shayne Brother and American Mutual Insurance Company*, 7 BRBS 309, 312, BRB No. 76-419 (February 24, 1978); *Kwasizur* v. *Cardillo*, 175 F.2d 235 (3rd Cir. 1948), *cert. denied*, 338 U.S. 880 (1949); *Young & Co.* v. *Shea*, 397 F.2d 185 (5th Cir. 1968), *rehearing denied*, 404 F.2d 1059 (5th Cir. 1968), *cert. denied*, 395 U.S. 921 (1969). Claimant must prove all that is not presumed. "Thus, the burden is on the Claimant to prove his injury. We do not believe the presumption of causality found in Section 20 is applicable in a case such as this because there must be proof of an injury before the presumption can arise." *Murphy, supra*, at 314.[2]

Moreover, in considering the issue of causal relationship, Claimant has the benefit of the legislative policy favoring awards in arguable cases. This Administrative Law Judge is abound by longstanding rules of judicial construction that the statute should be construed liberally in favor of claimants and that doubts should be resolved in their favor. *Swinton, supra*, at 1084; *Wheatley* v. *Adler*, 407 F.2d 307, 313-314 (D.C. Cir. 1968); *James H. Brennan* vs. *Bethlehem Steel Corporation*, 8 BRBS 419, BRB No. 77-203 (February 14, 1978). "*Swinton* holds that the Act presumes a claim to fall within its provisions, *in the absence of substantial evidence to the contrary*; that is, the employer must rebut the presumption *prima facie* with substantial countervailing evidence. *Id.* at 1081. For that rule, the D.C. Court of Appeals cited *Del Vecchio* v. *Bowers*, 296 U.S. 280, 286 (1935). *Del Vecchio* stands as the

[2] This presumption of compensability does not apply to a claim that disability is permanent rather than temporary since the issues of nature and extent of disability are quite properly litigated without the benefit of the presumption. *David P. Harrison* v. *Potomac Electric Power Company*, 8 BRBS 313, BRB 78-139 (May 30, 1978); *Elroy A. Lewis* v. *Sun Shipbuilding and Dry Dock Company*, 8 BRBS 613, BRB 77-588 (July 24, 1978); *Huningman* v. *Sun Shipbuilding and Dry Dock Company*, 8 BRBS 141, BRB No. 77-266 (March 31, 1978).

United States Supreme Court's last extensive analysis of the Section 20 presumptions. Hence, it is binding on all administrative and judicial tribunals that oversee the Act. The *Del Vecchio* case applies the 'bursting bubble' theory of presumptions to Section 20 of the Act. According to that theory, 'the only effect of a presumption is to shift the burden of producing evidence with regard to the presumed fact. If that evidence is produced by the adversary, the presumption is spent and disappears.' *McCormick's Handbook of the Law of Evidence*, §345 at 821 (2d ed 1972). 'Once the employer has carried his burden by offering testimony sufficient to justify a finding . . . [opposed to the presumed fact], the presumption falls out of the case . . . [Its'] only office is to control the result where there is an entire lack of competent evidence. *Del Vecchio* at 286.

"What the *Swinton* court found was that the Deputy Commissioner had failed to accord the presumption sufficient respect. The court said, 'We are satisfied that if the presumption had been honored, the Deputy Commissioner would have had to find that it was not overcome by substantial evidence.' *Swinton* at 1081-1082. That is, under the *Del Vecchio* test, the employer had failed to rebut the presumption." *Brennan, supra*, at 423-424.

What constitutes substantial evidence depends upon the facts and circumstances of each compensation claim, especially the Claimant's credibility. In *Charles F. Ethier* v. *General Dynamics Corporation*, 8 BRBS 575, BRB No. 78-287 (July 20, 1978), the Benefits Review Board, in affirming denial of a claim under the Act, ruled that an Administrative Law Judge properly considered the testimony of a physician in concluding that the Employer had dispelled the Act's Section 20(a) presumption that the claim comes within provisions of the Act and in concluding that the disability was unrelated to the accident. The Claimant had contended that the physician did not examine the Claimant in person, did not attempt to ascertain the accuracy of Claimant's accident history taken at Employer's infirmary and that, therefore, his testimony should have

been disregarded. The physician based his opinion on all available evidence of Claimant's condition and knew all the pertinent facts. Other than a short time for necessary medical attention, Claimant lost no time from work due to the injury until February 24, 1976, at which time Claimant suffered a grand mal seizure.

Once the Section 20(a) presumption is overcome by the introduction of substantial evidence, the fact-finder proceeds to evaluate the evidence introduced by the parties. *Travelers Insurance Co.* v. *Belair*, 417 F.2d 297, 301 n.6 (1st Cir. 1969); *Norat* v. *Universal Terminal and Stevedoring Corp.*, 3 BRBS 151, BRB No. 75-162 (Jan. 12, 1976). Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. "*Universal Camera Corp.* v. *NLRB*, 340 U.S. 474, 477 (1951); *Consolidated Edison Co.* v. *NLRB*, 305 U.S. 197, 229 (1938); *Steele* v. *Adler*, 269 F. Supp. 376 (D.D.C. 1967); *De Nichilo* v. *Universal Terminal and Stevedoring Co.*, 5 BRBS 723, BRB No. 76-327 (April 1, 1977). The statement in the Act that the evidence to overcome the effect of the presumption must be substantial adds nothing to the well understood principle that a finding must be supported by the evidence. *Crowell* v. *Berson*, 285 U.S. 22, 46 (1937); *Avionone Freres, Inc.* v. *Cardillo*, 117 F.2d 385, 386 (D.C. Cir. 1940); *Goins* v. *Noble Drilling Corp.*, 397 F.2d 392 (5th Cir. 1968).[3] In evaluation this evidence, as indicated above, I have operated under the statutory policy that all doubtful fact questions are to be resolved in favor of the injured employee because the intent of this statute is to place the burden of possible error on those best able to bear it. *Young & Co.* v. *Shea, supra*. This

[3] This presumption that employment caused the disability for which the claim is brought may be rebutted without showing any other cause of the injury. Thus, the Benefits Review Board affirmed a decision that the presumption is rebutted based on evidence which is substantial but which does not show the cause of injury. *Lovel V. Carver* v. *Potomac Electric Company*, 8 BRBS 43, BRB No. 77-460 (March 28, 1978).

statutory policy places a less stringent burden of proof on the claimant than the "preponderance of the evidence" standard which is applicable in a civil suit. *Strachan Shipping Co.* v. *Shea*, 406 F.2d 521 (5th Cir. 1969).[4]

After having reviewed all of the medical evidence and other record evidence in this case and having observed the demeanor of the witnesses, I find that Respondents have introduced substantial evidence to rebut the Section 20(a) presumption, that the presumption does not control the result herein and I will now proceed to weigh all of the evidence, resolving all doubts in favor of the Claimant herein.

Section 12 of the Act requires the Employee to give written notice of an injury within 30 days to both the Deputy Commissioner and the Employer. Section 12(a) provides as follows:

> Notice of an injury or death in respect of which compensation is payable under this Act shall be given within thirty days after the date of such injury or death, or thirty days after the employee or beneficiary is aware or in the exercise of reasonable diligence, should have been aware, of a relationship between the injury or death and the employment.

Section 13(a) provides in part:

> Except as otherwise provided in this section, the right to compensation for disability or death under this Act shall be

[4] Other cases wherein the Benefits Review Board has affirmed decisions dismissing compensation claims because the Employer had successfully rebutted the Section 20 presumption: *Major F. Warren* v. *International Great Lakes Shipping Company and American Mutual Liability Insurance Company*, 6 BRBS 78, BRB No. 76-428 (May 23, 1977); *Joseph C. Kirby Sr.* v. *Marriott Corporation and Liberty Mutual Insurance Company*, 6 BRBS 200 BRB No. 76-238 (May 23, 1977).

> barred unless a claim therefor is filed within one year after the injury or death . . . The time for filing a claim shall not begin to run until the employee or beneficiary is aware, or by the exercise of reasonable diligence should have been aware, of the relationship between the injury or death and the employment.

In applying both Section 12 and Section 13, it is well-recognized that the Act is to be liberally construed in conformance with its beneficent and humanitarian purposes in a way which avoids harsh and incongruous results. *Voris* v. *Eikel*, 346 U.S. 328, 333 (1953); *Kenneth W. Simonson* v. *Albina Engine and Machine Works*, 7 BRBS 100, 102, BRB No. 76-353 (December 13, 1977).

Section 13 was not intended to provide a technical device to release the employer and insurer from their obligations, but merely to prevent prejudice to them from the entertainment of stale claims. *Ingalls Shipbuilding Division, Litton Systems, Inc.* v. *Hollinhead*, 571 F.2d 272, 275 (5th Dir. 1978). This statute of limitations was designed to insure fairness to the employer. Its purpose is to prevent the revival of stale claims where "evidence has been lost, memories have faded and witnesses have disappeared." *Belton* v. *Traynor*, 381 F.2d 82 (4th Cir. 1967).

The statute of limitations contained in Section 13 of the Act is mandatory and compliance therewith has been termed "jurisdicational." *Sun Shipbuilding and Dry Dock Company* v. *Bowman*, 507 F.2d 146 (3rd Cir. 1975). Once the statute of limitations has run, the burden of proof falls upon the claimant to show an excuse for his delay in filing his claim and that the employer has not been prejudiced by the delay. *La Londe* v. *Gulf Oil Corp.*, 317 F.Supp. 692 (W. D. La. 1970). Otherwise, his claim must be time-barred. Ignorance of the law does not constitute a viable excuse for filing a claim after the limitations period has expired. *La Londe, supra*.

As previously noted, Section 13(a) provides that the time limitation begins to run when a claimant is aware or should have been aware of a relationship between his injury and his employment. Injury is defined in Section 2(2) of the Act to include occupational disease. *See* 33 U.S.C. §902(2). Thus, the crucial question for purposes of Section 13(a) is when did Claimant become aware of a relationship between his hypertension and his employment. In *Stark* v. *Lockheed Shipbuilding and Construction Co.*, 5 BRBS 186, BRB No. 75-253 (December 8, 1976), the Board extensively analyzed the meaning of the term "aware" as it is used in Section 13(a) of the Act. The Board concluded that in cases of occupational disease and latent injury, "aware" means "to have received knowledge of the work-related nature of the claimant's condition from a physician or other competent diagnostician." *Stark*, *supra*, at 195. The Board further concluded that the phrase "or in the exercise of reasonable diligence should have been aware" places a duty on the claimant to seek diagnostic confirmation of the nature and cause of his condition but that this duty does not arise until claimant has reason to believe that the condition "will or may well reduce his wage earning capacity." Furthermore, once a claimant has obtained a professional diagnosis, he will be considered "aware" for purposes of Section 13(a) and the time limitation of that provision will begin to run. *See Stancil* v. *Massey*, 436 F.2d 274 (D.C. Cir. 1970); *Washington* v. *Cooper Stevedoring of La., Inc.*, 556 F.2d 268 (5th Cir. 1977); *Aerojet-General Shipyards, Inc.* v. *O'Keefe*, 413 F.2d 792 (5th Cir. 1969).[5]

However, the Act also sets forth an exception to Section 13(a). Section 30(a) of the Act, 33 U.S.C. §930(a), provides that the

[5] The date on which a claimant is informed by his doctor of the relationship between his work and his disability is significant but it is not always controlling, especially where there is other evidence that claimant was aware, or in the exercise of reasonable diligence should have been made aware, of this relationship at an earlier date. *Harold Sicker, Sr.* v. *Muni Marine Company and State Insurance Fund*, 8 BRBS 268, 272, BRB No. 77-470 (April 27, 1978); *Morris W. Vaughan* v. *Washington Metropolitan Area Transit Authority*, 7 BRBS 264, BRB No. 76-115 (December 30, 1977).

employer must file a report containing certain specified information within ten days from the date of the injury or ten days from the date employer has knowledge of the injury. Section 30(f) of the Act, 33 U.S.C. §930(f), provides that if the employer had knowledge of the injury, failure to file the report required by Section 30(a) will toll the Section 13(a) limitation period regardless of whether the claim would otherwise be barred.[6]

This case does not involve an incorrect diagnosis of a physician which would, in effect, toll the statute of limitations. If the diagnosis were incorrect and the Claimant relied upon it, then the one year statute of limitations does not begin to run until the claimant "realized, or should have first realized, that his ailment was job related." *Sun Shipbuilding and Dry Dock Company* v. *Bowman*, 507 F.2d 46 (3rd Cir. 1975); *Pillsbury* v. *United Engineering Co.*, 342 U.S. 197 (1952); *Stancil* v. *Massey, supra; Washington* v. *Cooper Stevedoring, supra; Bernice Jackson* v. *Navy Exchange Service Center and Community Union Insurance Company*, 9 BRBS 437, BRB no. 77-374 (December 22, 1978).

In view of the foregoing, I conclude and find that Claimant became "aware, or by the exercise of reasonable diligence should have been aware," based upon a professional opinion of a medical doctor on December 7, 1976 (Claimant's Exhibit 4), that he had intermittent labile hypertension and, consequently, the Section 12(a) and 13(a) time limitations started to run at that time (i.e. December 7, 1976). I further find that Claimant's claim for workmen's compensation benefits on August 21, 1978 was not timely filed.[7]

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[6] An employer must know of the relationship of the employment to an injury or illness in order for the knowledge requirements of Sections 12(d) and 30(f) of the Act to be applied against the employer. *Strachan Shipping Company, et al* v. *Willie Davis and Director, OWCP* 571 F.2d 968, 8 BRBS 161 (5th Cir. 1978).

[7] I am aware that an employee need not notify his employer of a compensation injury in accordance with Section 12(a) of the Act "until he knows or reasonably should know that he has received an injury, arising in the course of employment, that disables him from future employment." *Bath Iron Works Corporation and Commercial Union Assurance Company* v. *James P. Galen and Director, OWCP*, 605 F.2d 583, 10 BRBS 863 (1st Cir. 1979).

However, assuming, *arguendo*, that the claim herein was timely filed, I will now consider whether Claimant's hypertension and diabetes mellitus are compensable disabilities under the Act.

Based upon the totality of the record, I conclude and find that Claimant's diabetes mellitus was first reported in writing by Dr. Dunn on April 13, 1978. On December 7, 1976, at which time Claimant's hypertension was first diagnosed, it was also reported that Claimant's routine laboratory examinations, ECG and EEG were normal. I also accept the diagnosis by Dr. V. Zaigraeff, on February 9, 1978, the Claimant had essential hypertension, myocardial strain, slight cirrhosis of the liver from alcohol intake and was overweight at 210 pounds (Claimant's Exhibit 7). At this time Claimant was placed on a strict diet — "no fats, no salts, no spices, no alcohol." I accept the diagnosis of Dr. Dunn that Claimant had diabetes based upon a physical examination on February 27, 1978 (Claimant's Exhibit 10). On March 17, 1978 Claimant advised medical personnel at Presbyterian Hospital of Dallas that he had intentionally lost twenty-two pounds while working in Israel. (Respondents' Exhibits 5-7). Therefore, I find that Claimant, while working in Israel, weighed as much as 232 pounds, weight which was entirely too heavy for his bodily frame (See Claimant's Exhibit 2, a photograph of the Claimant and others in front of the Sinai Field Mission).

I accept the opinions of Dr. Robert L. North, an eminent specialist in cardiovascular and internal medicine, who was subjected to excellent, thorough and searching cross-examination and who testified forthrightly that Claimant's intermittent hypertension and mild diabetes mellitus were not employment-related and could not be attributed to his occupation, his diet, geographical location or work environment, that he (Dr. North) did not find any physical impairment which would preclude his return to his previous employment, that diabetes mellitus is an inherited disease, that Claimant's hypertension and mild diabetes were under control by diet and medication, that high blood pressure *per se* is not a disease and does not cause disability, that hypertension and diabetes become clinically apparent in middle-age years and that Claimant

even if he had remained in South Texas would have developed the same problems at the same time because "(i)n that respect, it's his destiny." I also accept Dr. North's opinion that adequate physical activity and exercise are methods used to control hypertension and diabetes mellitus. Therefore, Claimant's manual labor might actually have had a therapeutic effect, instead of the alleged debilitating or aggravating effect claimed herein.

I also accept the diagnosis that Claimant had extreme anxiety and that this condition, together with his family problems, and isolated living, the I.R.S. audit and personal living habits, especially the excessive use of alcohol and his obesity contributed to his hypertensive condition and diabetes mellitus.

Furthermore, it is noted that Claimant's last two attacks occurred while he was away from the Sinai Field Mission and in Tel Aviv, enjoying his week's vacation at the "R & R" facility provided by the Employer. While it may be merely coincidental, I find this to be most significant, especially in view of his admission against interest, in a medical history report on March 17, 1978, that "he was a heavy drinker" but stopped two months ago (Respondents' Exhibit 5-7).

I also credit Mr. Kapple's testimony as to construction and functioning of the Sinai Field Mission, the nature of Claimant's duties there, the meals provided, the climate in the Sinai and the work environment. Furthermore, I also credit Mr. Ford's testimony as to Claimant's drinking habits while Mr. Ford was tending bar at the lounge.

I also accept Dr. Black's opinions that Claimant's neurological examination was normal. I credit the opinions of Dr. Spitzberg that he could find no evidence of organic disease, that he could not determine an etiology for his problems in Israel and that Claimant is in reasonable health for his age.

I am well aware of the well-settled doctrine that an employer takes a workman "as is" and if the workman has a pre-existing condition which is accelerated, aggravated or which manifests itself as the result of exertion incidental to the work required, a compensable injury results even though such exertion may not have harmed a person not suffering from the particular infirmity. *J. B. Vozzolo, Inc.* v. *Britton, supra*, at 148. "Also, the aggravation of the pre-existing back condition by the 'insult' to the Claimant's back which arose out of and in the course of his employment constituted injury under the Act." *John H. Rasinski* v. *I.T.O. Corporation of Baltimore and Liberty Mutual Insurance Company*, 7 BRBS 102, BRB No. 77-277 (February 28, 1978). I am not persuaded that the record before me contains any such evidence showing causality between Claimant's present problems and his employment. I, therefore, find that Claimant suffered no compensable injury while employed by E-Systems. As the Benefits Review Board pointed out in *Lennart V. Carlson v. Bethlehem Steel Corporation*, 8 BRBS 486, 488, BRB No. 78-247 (June 20, 1978): "Claimant's employment with Bethlehem Steel Corporation only furnished a convenient occasion to demonstrate to Claimant that his severly (sic) advanced degenerative osteoarthritis involving both knees will no longer tolerate any further weight-supporting activity, particularly climbing vertical ladders, compensation must be and is hereby denied."

The concept of an occupational disease is aptly expressed by the following quotation:

> "It is not the intent of this statute to create a general health insurance program. The inclusion of occupational diseases is limited to maladies resulting from working conditions which are peculiar to the calling and are more hazardous than those encountered in ordinary living." *Collins* v. *Lackland Army & Air Force Exchange Service*, 3 ARBS 61 (ALJ) October 30, 1975.

On the basis of the totality of the medical evidence and other record evidence and having observed the demeanor of the witnesses, I find and conclude that Claimant's hypertension and diabetes mellitus were not caused, triggered, aggravated or exacerbated by his employment or the work environment. I further find and conclude that Claimant's hypertension and diabetes mellitus would have occurred irrespective of his employment in the Sinai and would have occurred had he remained in the United States working at an occupation not subject to the jurisdiction of the Act. The diabetes mellitus is the natural progression of the Claimant's pre-disposition. To use Dr. North's words, "It's his destiny." There is no credible evidence that Claimant's hypertension is work-related. It is probably the result of his lengthy isolation from his family, the I.R.S. audit and his personal living habits.

Although Claimant properly argues that the Act should be interpreted liberally, it is well-settled that "plain terms of the statute may not be disregarded under the guise of interpreting it liberally." *Eikel* v. *Voris, supra,* at 333; *Pillsbury* v. *United Engineering Co.,* 342 U.S. 197, 200 (1952).

Based upon the totality of the record and the foregoing Finding of Fact and Conclusions of Law, it is determined that the claim must be denied. As I have ruled that Claimant has not sustained a compensable disability under the Act, his attorney is not entitled to an attorney's fee assessed against the Respondents.

ORDER

The claim for benefits under the Longshoremen's and Harbor Worker's Compensation Act, as extended by the Defense Base Act, filed by Howard R. Clymer is hereby DENIED.

DAVID W. DI NARDI
Administrative Law Judge

Dated: November 30, 1979
New Orleans, Louisiana

CERTIFICATE OF FILING AND SERVICE

I certify that on December 5, 1979 the foregoing Compensation Order was filed in the Office of the Deputy Commissioner, Eighth District Office and a copy thereof was mailed on said date by certified mail to the parties and their representatives at the last known address of each as follows:

Howard Clymer, 4202 Colgate, Garland, Texas 75042
Claimant

E-Systems Incorporated, P.O. Box 1056, Greenville, Texas 75401
Liberty Mutual Insurance Company, 2530 Walnut Hill, Dallas, Texas 75229
Insurance Carrier or Employer (if self-insured)

A copy was also mailed by regular mail to the following:

Judge David Di Nardi, Office of Administrative Law Judges, U.S. Department of Labor, Washington, D.C. 20210

Associate Solicitor of Labor for Employee Benefits, U.S. Department of Labor, Suite N-2716, NDOL, Washington, D.C. 20210

Director, Office of Workers' Compensation Programs, (LHWCA) U.S. Department of Labor, Washington, D.C. 20211, Samuel Boyd, Esquire, 5744 LBJ Freeway, Dallas, Texas 75240, John William Payne, Esquire, 1700 Republic National Bank Bldg., Dallas, Texas

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Deputy Commissioner
Eighth Compensation District
U.S. Department of Labor
EMPLOYMENT STANDARDS ADMINISTRATION
Office of Workers' Compensation Programs

APPENDIX E

OMB Approval No. 44-R1275

EMPLOYEE'S CLAIM FOR COMPENSATION

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
OFFICE OF WORKERS' COMPENSATION PROGRAMS

1. OWCP No.

2. Carrier's No.

SEE INSTRUCTIONS ON REVERSE

3. Name of person making claim (Type or print): First: Howard; Middle initial: R.; Last: Clymer

4. Date of injury (Month/day/year): Manifestation of disease first reported 1/78

5. Claimant's address (Number, street, city, state, ZIP code): 4202 Colgate, Garland, Texas 75042

6. Marital status: Married

7. Sex: ☒ Male ☐ Female

8. Age or date of birth (Month/day/year): Aug. 1, 1929

9. SOCIAL SECURITY number (May be required by law): 458 34 1109

10. Did injury cause loss of time beyond day or shift of accident? ☒ Yes ☐ No

11. On date of injury, was person: ☐ A.M. ☐ P.M.

12. Hour began work: ☐ A.M. ☐ P.M.

13. Hour of accident: ☐ A.M. ☐ P.M.

14. Did you stop work immediately? ☐ Yes ☐ No

15. Date and hour pay stopped: 1-11-78 ☐ A.M. ☐ P.M.

16. Date and hour returned to work: Still off; indefinite duration

17. Occupation (Job title; duties performed): Air Con/Heating Mechanic

18. Injured while doing regular work? ☐ Yes ☒ No (If "No," explain in Item 24)

19. Wages or earnings when injured (Include overtime allowances, etc.): $

20. Weekly: $

21. Total earnings during year immediately before injury: $24,480.00

22. Has 3rd party or other claim been made because of this injury? ☒ Yes ☐ No subject to this claim

23. Number of years you worked for this employer: 11 mos

24. Number of days usually worked per week: 6

25. Name of supervisor or employer at time of accident: G. D. Wheatley

26. Exact date supervisor or employer knew of occup. disease manifestation 1/78

27. Were you employed elsewhere during the week injured? ☒ No ☐ Yes (If "Yes," state where and what on reverse.)

28. Exact place where accident occurred (Street address, city, town, Name of vessel, pier, terminal, etc.): Sinai Buffer Zone Israel

29. Describe in full how the accident occurred (Before the events which resulted in the injury or occupational disease): Tell what the injured was doing at the time of the accident. Tell what happened and how it happened. Name any objects or substances involved and tell how they were involved. Give full details on all factors which led or contributed to the accident. (If more space is needed, continue on reverse.) On Jan. 30, 1978 Mr. Clymer visited Dr. Chaim Feldman in Tel Aviv Israel at which time his condition was diagnosed as hypertension & coronary insufficiency. April 13, 1978 John Dunn, M.D. Richardson, Tex. diagnosed his condition as hypertension - possible diabetes; disabilities attributed to the work environment & diet provided by the employer. (See reverse side)

30. Nature of injury (Name part of body affected--fractured left leg, bruised right thumb, etc. If there was a loss or loss of use of a part of the body, describe.): Unknown, see line 24.

31. Have you received medical attention for this injury? see reverse ☒ No ☐ Yes (If "Yes," give name and address of doctor, clinic, hospital, etc.) Only partial attention. Insurance carrier ceased Assistance without cause in March, 1978.

32. Have you returned by a physician of your choice? once returned to U.S. by ☒ Yes ☐ No employer.

33. Has such treatment been provided by employer? ☒ Yes ☐ No thru 3/78

34. Are you still disabled on account of this injury? ☒ Yes ☐ No

35. Have you worked during the period of disability? ☐ Yes ☒ No

36. Have you received any wages since becoming disabled? ☐ Yes ☒ No (If "Yes," give dates on reverse.)

37. Has injury resulted in permanent disability, amputation or serious disfigurement? ☒ Yes (Describe on reverse.) ☐ No

38. Name of employer (Individual or firm named): E-Systems, Greenville Division

39. Nature of employer's business: Early Warning System Sinai

40. Address of employer (Number, street, city, state, ZIP code): P. O. Box 1056, Greenville, Texas 75401

41. If accident occurred outside the U.S., state whether you are a U.S. citizen: ☒ Yes ☐ No

42. I hereby make claim for compensation benefits, necessary and medical, under the Defense Base Act.

Signature of claimant or person acting in his or her behalf: Howard R. Clymer by Ronald E. Reid Attorney

43. Date of this claim (Month/day/year): 8/[illegible]/78

Section 31 of the Longshoremen's Act, 33 U.S.C. 931, provides, as follows: Any person who willfully makes any false or misleading statement or representation for the purpose of obtaining any benefit or payment under this Act shall be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not to exceed $1,000 or by imprisonment of not to exceed one year, or by both such fine and imprisonment.

ATTORNEY FOR EMPLOYEE

Form LS-203
(Rev. Mar. 19[illegible])

INSTRUCTIONS

- Use this form to file a claim under any one of the following laws:

  Longshoremen's and Harbor Workers' Compensation Act
  District of Columbia Workmen's Compensation Act
  Defense Base Act
  Outer Continental Shelf Lands Act
  Nonappropriated Fund Instrumentalities Act

- Applicant may leave items 1. and 2. blank.

- No benefit, other than medical, need be paid under the appropriate law unless a claim therefor is filed within one year after the injury or death *(33 U.S.C. 913(a))*. If compensation has been paid without an award, a claim may be filed within one year after the last payment. The time for filing a claim does not begin to run until the employee or beneficiary knows, or should have known by the exercise of reasonable diligence, of the relationship between the employment and the injury. To file a claim for compensation benefits, complete and sign two copies of this form and send or give both copies to the Office of Workers' Compensation Programs Deputy Commissioner in the city serving the district where the injury occurred. District offices of OWCP are located in the following cities.

Baltimore	Denver	Kansas City, Mo.	Philadelphia
Boston	Honolulu	New Orleans	San Francisco
Chicago	Houston	New York	Seattle
Cleveland	Jacksonville	Norfolk	Washington, D.C.

Use the space below to continue answers. Please number each answer to correspond to the number of the item being continued.

24, 25. Prior to his employment in Israel by E-Systems, the employee was in good health. Although hired as an Air Conditioning/Heating Mechanic, he was utilized as a manual laborer for more than six months at the age of 46, in the destructive desert heat. The combination of the stress of the labor on his body and the high fat diet wholly controlled and provided by the Employer resulted in grave circulation disfunctions and a possible diabetic condition. Because of the gravity of the disability he can no longer work in his field, nor can he perform any job requiring any physical exertion. Without the insurance carrier's cooperation he is not getting critical medical attention and treatment. He will not be employable in any endeavor until his condition can be finally determined and treated.

PRIVACY ACT OF 1974 NOTICE

In accordance with the Privacy Act of 1974 (Public Law No. 93-579, 5 U.S.C. 552a), you are hereby notified that: (1) The Longshoremen's and Harbor Workers' Compensation Act, as amended and extended (33 U.S.C. 901 et seq.) is administered by the Office of Workers' Compensation Programs of the U.S. Department of Labor. In accordance with this responsibility, the Office receives and maintains personal information on claimants and their immediate families. (2) The information will be used to determine eligibility for and the amount of benefits payable under the Act. (3) The information may be used by other agencies or persons in handling matters relating, directly or indirectly, to the subject matter of the claim, so long as such agencies or persons have received the consent of the individual claimant, or have complied with the provisions of 20 CFR 702. (4) Furnishing all requested information will facilitate the claims adjudication process, and the officials of any providing all or any part of the requested infor[illegible] may delay the process, or result in an [illegible]'s decision or a reduced level of benefits (disclose[illegible]). [illegible] a social security number is voluntary; the failure to disclose such number will not result in the denial of any right, benefit or privilege to which an individual may be entitled.